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Expert Report

For New Zealand Commerce Commission

Telecommunications Dispute Resolution (TDR)

October 2024 **Contents**

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1. Introduction

1. The Telecommunications Dispute Resolution (TDR) is the principal dispute resolution service for consumers with disputes with their telecommunications service providers about mobile, internet and landline services. It is also the dispute resolution service for disputes relating to the 111 Contact Code and Copper Withdrawal Code. TDR operations are guided primarily by the New Zealand Telecommunications Forum (TCF) Customer Care Code and its own Terms of Reference (ToR).
2. FairWay Resolution Limited is engaged as Scheme Agent, currently in the first of a three year contract, and is in charge of day to day operation of TDR. The oversight of TDR operations and Scheme Agent performance is managed by the staff and Board of Telecommunications Disputes Resolution Limited (TDRL).
3. The Commerce Commission (Commission) is required to review each telecommunication industry dispute resolution scheme at least once every 3 years¹. The Commission last reviewed the TDR in 2021 and issued a Review making a number of changes to the operation of the service. These included to the structure, governance and focus of the scheme and to the various Codes that set obligations on providers.
4. The Telecommunications Act 2001 includes a list of matters that the Commission may, without limitation, consider when undertaking a review. These include:
 - (1) The effectiveness of the scheme in resolving complaints by consumers against service providers²
 - (2) The adequacy of the scheme rules³
 - (3) Whether the scheme rules comply with the principles of accessibility, independence, fairness, accountability, efficiency and effectiveness⁴.
5. The Commission launched the Review on April 11, 2024 setting out three particular questions that the Commission was seeking input to from interested stakeholders:
 - (1) How effective have the changes to TDRS been in improving outcomes for consumers? Please tell us where you consider changes have or have not been successful and the reasons for your view.
 - (2) Are there any other ways TDRS could be improved for the benefit of consumers and to maintain best practice in this area? Please tell us what further specific changes you consider necessary and why.
 - (3) Are there any issues or opportunities that should be addressed in this review?

¹ Telecommunications Act 2001 s246(1)

² Telecommunications Act 2001 s246(2)(d)

³ Telecommunications Act 2001 s246(2)(e)

⁴ Telecommunications Act 2001 s246(2)(f)

6. Five submissions were received through this process and are posted on the Commission's website.
7. As in 2021, the Commission appointed Cameron Ralph Khoury (CRK), a consultancy with extensive expertise in external dispute resolution, to assist the Commission with the conduct of the review. CRK were asked to:
 - a) Review the submissions received
 - b) Consult with stakeholders, including the newly responsible TDR Limited Board
 - c) Review the operations of the TDR
 - d) Provide analysis of review-related information
 - e) Prepare an expert report that the Commission may draw upon.
8. CRK's work has included:
 - a) Review of five written submissions to the Commission (TCF, Spark, Chorus, Devoli and UDL)
 - b) Review of documents and data provided by FairWay Resolution Limited (FairWay) as Scheme Agent, and the TCF (mainly the various Telecommunications Codes)
 - c) A walkthrough of 12 closed TDR cases
 - d) Meetings with stakeholders (the newly appointed TDR CEO, the TDRL Board, Fairway management, TDR retail and wholesale members, the TCF, consumer organisations FinCap, TUANZ and Consumer NZ and Ministry of Business, Innovation and Employment (MBIE) representatives)

Structure of report and terminology

9. This report is structured to follow the key themes from the Commission's 2021 Review, along with an Executive Summary.
10. This report uses the following terms:
 - (1) **Resolution practitioner** is a legally qualified person whose TDR role is to consider jurisdiction, conduct mediation or adjudication and provide final determinations
 - (2) **CC Code** is the Customer Care Code developed by the TCF in response to the Commission's 2021 Recommendations, which came into effect in July 2023
 - (3) Board is the governing body of the TDRL – the legal entity established to oversee the TDR scheme
 - (4) **EDR** (external dispute resolution) is a generic term for dispute resolution that takes place via an ombudsman scheme or other complaint handling organisation that is external to the organisation that is the subject of the dispute

- (5) **CDR** is an early stage contact by a consumer with the TDR. In the first instance, these are referred to the relevant Scheme Member to ensure that there has been an opportunity to resolve the matter raised. If not resolved, the matter may proceed to the TDR's formal complaint stage at which point it becomes classified as a complaint.
- (6) **RSMs** (Retail Scheme Members) are retail telecommunication services providers who are members of the TDR
- (7) **Scheme Agent** is the organisation contracted by the TDRL to operate the TDR (FairWay Resolution Limited is the current contracted organisation)
- (8) **Scheme Members** are RSMs and WSMs
- (9) **TCF** is the New Zealand Telecommunications Forum Inc, the industry body representing the majority of NZ telecommunications providers
- (10) **TDR** is the current name for the Telecommunications Disputes Resolution scheme under review (formerly known as the TDRS)
- (11) **TDRL** is the Telecommunications Disputes Resolution Limited - the company established to oversee the TDR scheme
- (12) **ToR** are the Terms of Reference that set out how the TDR operates
- (13) **WSMs** (Wholesale Scheme Members) are wholesale telecommunication services providers who are not technically members of the scheme however voluntarily participate in the TDR

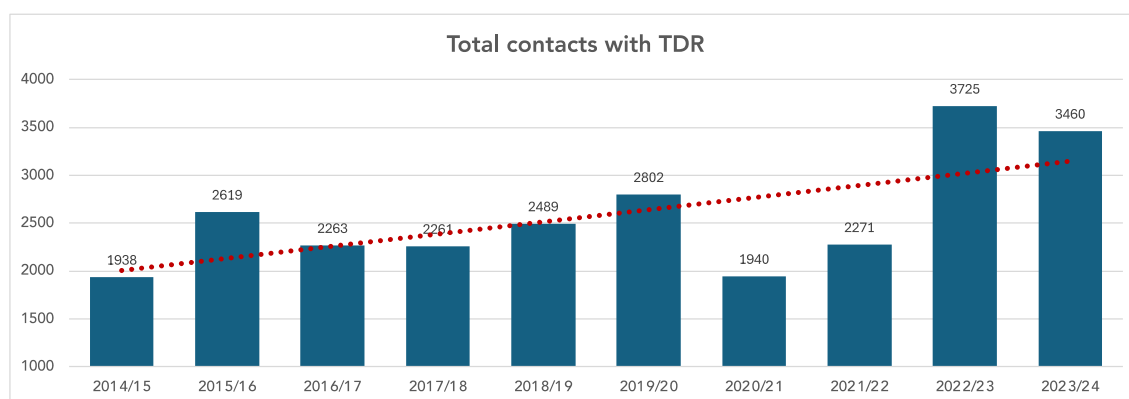
2. Background

Context

11. The then TDRS was created in 2007 by the industry body TCF. Responsibility for the scheme was transferred to an independent company (TDR Limited) following the 2021 Review. The TCF CEO remains as a minority shareholder of the TDRL.
12. All TCF members must be TDR members. Non-TCF members may also be members. In 2021, the TDR comprised 19 RSMs and 5 WSMs, which has grown to 30 RSMs and 7 WSMs (do not contribute to TDR funding, but voluntarily participate) currently.
13. TDR complaints and enquiries can be about *“any goods, services, equipment and/or facility that enables or facilitates telecommunications”*⁵ and so include voice services (mobile and landline services) and broadband/ internet services. Matters must be initiated by an end user customer - *“a person who has a Billing Relationship with A TDR Scheme Member in respect of the relevant Telecommunications Service”*⁶, either a residential customer or a small business customer⁷.
14. Customers who have accessed the TDR has grown significantly but quite unevenly over the past decade – an average of a little under 10% growth per year. (This is significantly higher rate of growth than New Zealand’s population growth of around 1.5% per annum over that time – although the causes for this could be many.)

Figure 1: Total complaint and service requests with the TDR per year

Source: TDR data



15. Important to note in reflecting on the figures above that in the period 2014/15 to 2019/20, the average growth in numbers of contacts to the TDRS was 8.8%. It can likely be safely assumed that the large drop in the next two years were COVID-related. While the step up in 2022-23 was

⁵ Customer Care Code Section N. definition of “Telecommunication(s) Services”

⁶ Customer Care Code Section N. definition of “Customer”

⁷ Customer Care Code Section N. excludes complaints relating to a Corporate Customer – defining this as a business or other organisation with a) at least 20 full time or equivalent employees, or b) less employees if the Scheme Agent considers that the business or other organisation’s size, structure or nature of business makes it analogous to a business with at least 20 full time or equivalent employees.

large in comparison with the prior year, it can be argued that in combination with the small drop in 2023-24, it may only have restored the use of the TDR to its long-term trend (currently 9.7%).

Finding 1.

In our view, it is too early to safely conclude that the measures undertaken after 2021 have been successful in actually lifting New Zealand consumer use of TDR above its long-term trend. A reliable analysis would have to also consider the growth of the telecommunications market, changes in products and services, pricing changes, billing arrangements, economic health of the community, demographics of usage and track awareness data, amongst other things. The next review, due in 2027 should revisit usage of the scheme discussed at some length in the 2021 Report.

16. Throughout the period shown above, the proportion of matters that are dealt with (closed or resolved) by referral to the Scheme Member is the vast majority – generally over 96% of all contacts. Other than a significant reduction in the number of Out of Jurisdiction outcomes, the remaining 4% or so of total complaints and enquiries that are substantively dealt with by the TDR are tracking in a similar trend to the total growth shown in the chart above.
17. While it can be seen that this is a good thing (scheme members dealing with dissatisfaction promptly and voluntarily), the fact that only a tiny volume of the consumer complaints to TDR are actually enquired into in any depth leaves the scheme little to go on by way of confidence that the scheme members are fairly dealing with those referred matters, nor by way of systemically improving telecommunication services. This limited exposure colours a number of our observations in this report.
18. The risk that complainants are not being dealt with fairly by scheme members is ameliorated to some extent by the good Scheme Agent practice of contacting all consumers who have been referred to the provider (and the provider themselves) to ask whether the matter has been resolved or closed, abandoned or deadlocked. Unfortunately, no other information is recorded about the fate of the referred complaint.
19. This would be a most useful data set, particularly if there was an accounting for the consumers who couldn't be contacted and some more granular and revealing categorisation of the consumer response as to what happened when they contacted their SM. We think that if capturing this data for the entirety of referred matters is too onerous or costly, the numbers are large enough that a periodic project of sampling (say for a month, twice a year) would produce enough data to be of considerable value.

Finding 2.

The TDR should collect some granular categorisation data as to what happened to the consumer's complaint from the follow up contacts that TDR make to both the referred consumer and the Scheme Member. This could be initially done on a periodic sampling basis to keep costs down.

20. It is difficult to judge whether the growth rate or the current 'normal' is low, high or about right. This was explored extensively in the 2021 report and, for example, we found that Australian data suggested a per capita rate about 25 times higher than in New Zealand, however the

equivalent figures for Canada and the UK were similar to New Zealand. A closer to home comparison with the Utilities Disputes scheme revealed a rate of usage of around 3 times the TDR rate.

21. These were per capita figures and it could be argued that a per connection figure might be more useful, which we couldn't obtain at the time. For all of that, we found that stakeholders generally, including industry, believed that with the relatively low awareness survey results, the rate of usage ought to be higher and significant effort was put into raising consumer awareness of the TDR. This is discussed in the body of the report.
22. Scheme members told us that industry improvements in the recent past would have resulted in fewer complaints going to the TDR than would otherwise have been the case. They cited a general move to rationalise legacy offers, to reduce the complexity of pricing, completing the move off legacy networks, the improved approach from WSMs and the shift to more digital self-service customer support.
23. Of course, the telecommunication environment has not stayed still to enable like-for-like comparisons. Scheme members have acquired competitors, split off subsidiary brands, new entrants have emerged, technology has changed, products and services have changed including a significant trend to bundling of services, potentially unregulated satellite services are breaching national borders, inflation has re-emerged after laying dormant for some years, impacting prices and putting segments of most world economies under significant cost of living pressure.

Focus of the Review

24. Given the significant reach of the changes recommended in the 2021 Review, the Commission has determined that this 2024 review should focus on the effectiveness of implementation of the 2021 reforms.
25. The Commission's Issues Paper sets out the matters it intends to consider in its 2024 review of the TDR. These are:
 - (1) Awareness
 - (2) Practice management (forms of guidance)
 - (3) Systemic issues
 - (4) Complaints handling process
 - (5) Jurisdiction
 - (6) Governance
26. The Commission is conscious that it has taken some time for industry, the newly established TDRL and Fairway as Scheme Agent to adapt to the recommendations of 2021 and understands that in some areas, in particular the governance of the scheme, it may be too early to assess the impact.

3. Executive summary

27. We found that the Commission recommended reforms from 2021 have either been implemented or substantially progressed, with the exception of improved systemic analysis and reporting. We found that overall, the TDR has improved its effectiveness as an EDR scheme against the principles of accessibility, independence, fairness, accountability, efficiency and effectiveness.
- (1) The TDR has improved its accessibility to New Zealand consumers through a concerted awareness campaign and although there may be other factors behind this, there has been a worthwhile increase in the number of consumers accessing the scheme, along with an uplift in consumer awareness of the scheme.
 - (2) Changes to the Codes (mainly the Customer Care code) governing the conduct of telecommunication providers along with changes to the TDR Terms of Reference has improved access to the TDR through a much reduced number of exclusions and improved the speed of response through shorter dispute-handling timeframes.
 - (3) The TDR has strengthened its actual and perceived independence and accountability through its new structure and governing Board, although there remains some disquiet about the degree of control the industry maintains over budgeting and fees.
 - (4) The scheme's processes are clear and well established with industry members and consumer feedback overwhelmingly providing highly positive feedback about the TDR's processes and staff professionalism, skills and approachability.
 - (5) While external stakeholder organisations were generally conscious of the TDR efforts in raising awareness with the general public, it appears that engagement between the consumer organisations themselves and the TDR has slipped a little.
 - (6) At the time of our review, the TDR Board had just appointed a full time CEO, who has been charged with further developing the working relationship between the TDR Board and Fairway as the scheme agent and the TDR's engagement with stakeholder organisations.
 - (7) Only a limited degree of progress has been made on demographic data collection, analysis and reporting.
 - (8) Another area yet to show much in the way of signs of implementation is in systemic issue analysis and reporting and stakeholders from all sides are waiting on this.
28. While our review was focused on the implementation of the Commission recommendations, and was therefore a lighter touch investigation of the complaint handling itself, we found a couple of areas which we think warrant some attention from the TDR CEO and Board in the coming year or two.
- (1) While industry praised Fairway for its neutral handling of disputes, and we could see substantive improvement in fairness of the process, we thought that in a couple of respects, Fairway's processes did not provide the kind of fairness assistance to consumers that we normally expect to see in an EDR scheme (discussed in the body of the report).

(2) We also found that Fairway’s TDR processes included some formalities around jurisdiction checking that would not be present in other EDR schemes we have reviewed elsewhere. Again, we discuss these in the body of the report.

(3) We suggest a few ideas for KPI performance measure reporting

29. In making these observations, we do not see them as a failing of Fairway the organisation. Fairway as the scheme agent, has had a difficult challenge in making adjustments to the settings of the scheme. For many years, Fairway had to operate without an independent owner of the scheme to report to and found itself in the uncomfortable position of having to make judgements as to settings and approach itself.
30. Now it has that owner in the shape of the TDRL Board, however it has only just had a full-time employee of the Board appointed – to be the CEO and overseer of the contract to operate the scheme. Of course, it will take some time to come to grips with these issues and to figure out how to deal with them.
31. In our view, it is the responsibility of the TDRL to satisfy itself that the scheme agent’s dispute handling settings are what they should be. We expect that this will take some time – for the TDR CEO to understand Fairway’s processes at a level of detail, to settle the roles, responsibilities and working cadence as between the TDR as owner and Fairway as operator – and for Fairway to understand and adjust as needed.
32. Finally, we are conscious that a number of the matters raised for reform 2021 have not been fully implemented and as a consequence, the Commission must consider what approach it should take to monitoring progress after this review. We think that some of the matters raised, should the Commission accept them, should be monitored at closer intervals – rather than being left to the next review in 2027.

4. Awareness

33. The 2021 Review highlighted the question of consumer awareness of the TDR and the Commission gave considerable weight to this in its 2021 report, making four recommendations, discussed below.

R4. The TCF and TDRS should work to improve consumer awareness of the TDRS, in particular, to ensure that consumers who have raised an enquiry or complaint with their service provider are informed of their right of recourse to the TDRS.

R5. The Customer Complaints Code (see R1) should establish clearer guidelines and obligations on Retail Scheme Members to raise awareness of the TDRS among their customers. This should be accompanied by regular compliance testing.

- *This should ensure Retail Scheme Members take a consistent approach to raising awareness at different customer touch points, such as websites, bills, promotional materials, Interactive Voice Recording messages and call centre handling.*
- *Retail Scheme Members should inform their customers of the TDRS when a complaint is first made, during the complaint process and when deadlock has been reached.*

R6. The engagement requirements in the TDRS 2021/22 Business Plan should be extended in future years so that the Scheme Agent carries out high quality engagement with Scheme Members, consumer organisations, Māori, and the wider community to improve consumers' awareness and understanding of the scheme.

R7. Continue increased resourcing for awareness initiatives beyond 2021/22 to ensure they have a lasting effect. The work should focus on, among other things:

- *ensuring consumers are made aware of the TDRS at the beginning of the complaints process;*
- *reaching consumers from groups that are rarely using the TDRS; and*
- *continuing to build general awareness of the TDRS.*

34. A key TCF response was to approve a considerable boost in budget for promotion and awareness building during 2021/22, 2022/23 and 2023/24. This effort was managed by Fairway as the scheme administrator and professional assistance was obtained in both design and measurement of the effectiveness of the awareness campaign.

35. To repeat our description of awareness for EDR schemes from 2021, maintaining continuous customer awareness of multiple ombudsman or disputes schemes for the rare times when they are needed is an unrealistic expectation. All EDR schemes rely on three channels for customer awareness – in the following order of importance:

- a) Advice to the customer from the scheme member

Obligations for the scheme member to inform the customer of the availability of the EDR scheme at appropriate points in the sale or transaction and also in the process of their own internal complaint handling.

b) Advice and referral

Common points of advice or reference in the community, such as legal firms, government agencies, consumer representatives, community legal aid bodies, welfare agencies, charities and community groups should be aware of the EDR scheme, its scope and powers and able to put customers in contact with it.

c) Community awareness

The final channel is general awareness in the community. The aim here is to achieve sufficient numbers of people with some awareness of the existence of the scheme to facilitate advice amongst family, friends, social networks. This awareness can be as limited as knowing that there are a range of EDR services in the community and to suggest a search for an appropriate one.

36. The awareness effort run by Fairway on behalf of the TDR has been heavily focused on community awareness (c. above). The evidence is that this campaign had some impact, with surveys showing an increase in the prompted and unprompted consumer awareness of the TDR. See the charts below from Consumer NZ and MBIE.

Figure 2: MBIE 2024 consumer awareness survey results

General consumer awareness of dispute resolution services is strong, with 8 in 10 aware of at least one service, despite a longer-term downwards trend.

While awareness of various dispute resolution services remains broadly consistent with 2020, fewer consumers are aware of at least one agency (down from 83% in 2022 to 80% in 2024). While most consumers claim to have heard of the Disputes Tribunal of New Zealand, awareness is at its lowest level to date at 61%, compared to 73% in 2022. This is followed by the Banking Ombudsman Scheme (49%) and the Motor Vehicle Disputes Tribunal (35%). Awareness of all other listed dispute services is less than 30%.

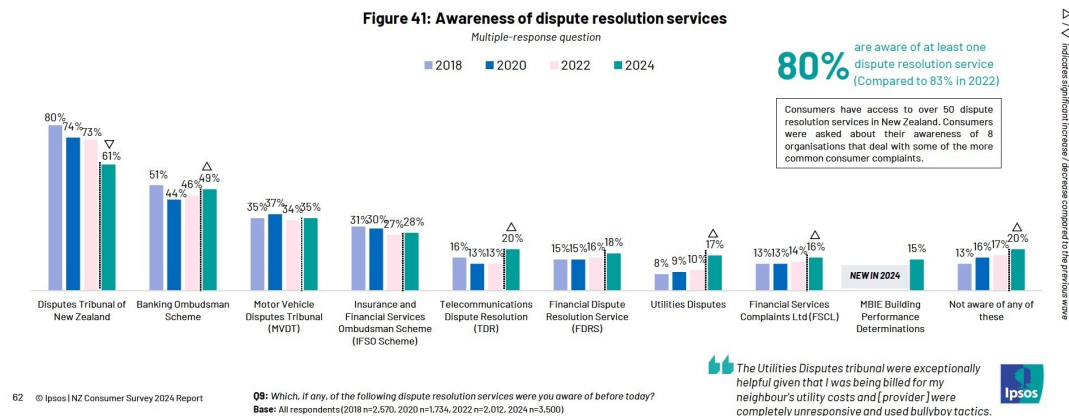
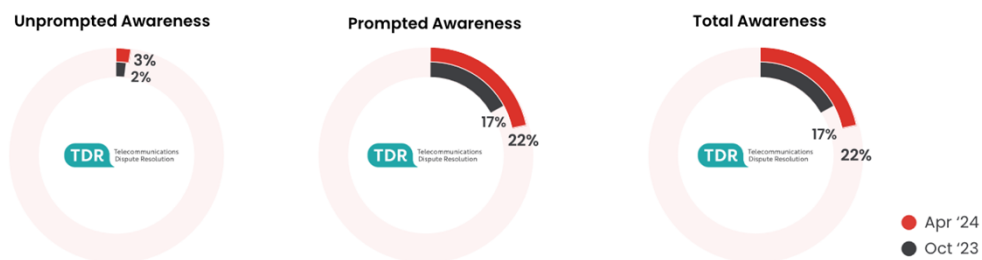


Figure 3: 2024 Consumer NZ TDR Awareness survey

consumer.

Key findings

- Overall, awareness has increased from 17% to 22%.
- Both unprompted and prompted awareness of the TDR has seen a rise since October.
- Awareness for younger demographics has increased since October 2023. Those aged 30 to 39 are most aware of the TDR.



Unprompted: If you had a problem with your telecommunications provider (mobile or internet) and wanted to make a complaint, who would you contact (other than your telecommunications provider)? Base: Total sample excluding blank or non-response (Apr '24, base n=895; Oct '23, base n=920). Prompted: Have you heard of the Telecommunications Disputes Resolution Scheme? Base: Total sample (Apr '24, n=1,000; Oct '23, Base n = 1,001).

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Figure 4: 2024 Consumer NZ unprompted awareness survey

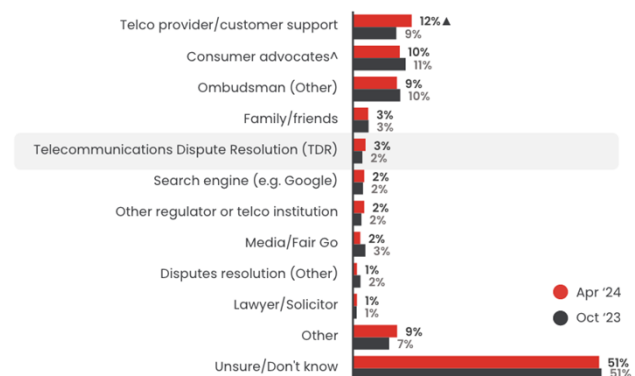
consumer.

Detailed findings: Unprompted awareness

Many New Zealanders remain uncertain about where to direct their complaints if not to the provider directly.

- Half (51%) are “unsure” or “don’t know” of who they should turn to when making a complaint.
- Telco providers are most commonly identified resource to lodge a complaint, followed by advocacy groups and an Ombudsman, highlighting some confusion among consumers.
- Only 3% of respondents, without being prompted, recognise the TDR as a resource for lodging complaints.

If you had a problem with your telecommunications provider (mobile or internet) and wanted to make a complaint, who would you contact (other than your telecommunications provider)?



Q. If you had a problem with your telecommunications provider (mobile or internet) and wanted to make a complaint, who would you contact (other than your telecommunications provider)? Base: Total sample excluding blank or non-response (Apr '24, base n=895; Oct '23, base n=920). Respondents can mention more than one source. [^] “Consumer advocates” include Consumer NZ/Consumer Affairs/Consumer Rights/Citizens Advice Bureau. - “Other” contains statements such as the government.

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37. There seems to be no doubt that there has been an improvement in both prompted and unprompted awareness – and while our instincts are that there is room for quite some improvement in the awareness levels, there remains no ‘right’ answer as to where the awareness ratings should be. In reality, that becomes a matter for the TDRL’s judgement, in consultation with its stakeholders.

38. The uptick in awareness has been welcomed by all, and the TDRL Board have committed their new CEO to prioritising awareness raising going forward. We understand that the TCF and the TDRL Board have accepted that the level of investment in community awareness during this period was by nature of a surge effort and unsustainable in the longer term (and likely not as well targeted as it might have been). We understand that the budget has been returned to pre-boost (2020/21) levels, in part due to additional costs associated with the new governance arrangements and the need for a TDRL CEO.
39. We understand that there have been additional funding needs for the TDR scheme and while that reduction in awareness funding may be the current view, we would like to think that the TDRL Board and TCF would be open to proposals for appropriate ongoing awareness and engagement resourcing that come from the new CEO's review and analysis. See also our comments about the TCF effective veto over the TDR budget and fee structure at paragraph 101.
40. While we understand that there has been no intentional scaling back of non-member stakeholder engagement during the past year, we heard from external stakeholder organisations that they felt that their engagement with the TDR had dropped off somewhat during the re-organisation and restructure of the scheme's ownership – understandable given the tasks at hand - and perhaps also as the TDR focus shifted to community awareness raising.
41. The TDR Board has set its new CEO a priority of developing a new longer-term and multi-pronged engagement strategy – a healthy step and good practice in our experience.

Finding 3.

In addition to the obvious need to monitor awareness survey results, it would be useful for the Commission to receive updates from the TDRL on the future awareness program design, the adequacy of awareness resourcing and feedback from stakeholder organisations on the effectiveness of engagement with TDR.

42. The renamed Customer Care Code has been rewritten to tighten up the obligation on Scheme Members to make consumers aware of the presence of the TDR (R5.) – a practice monitored by the TCF compliance function by way of a self-certification process. The TDR ToR also places obligations on Scheme Members to promote awareness of the TDR. Both the TCF and Scheme Members told us that compliance with the CC Code was being actively monitored.
43. We acknowledge that the revision of the ToR and Codes has, quite sensibly, tried to place responsibility for SM behaviour in the CC Code and the Scheme Agent behaviour in the ToR. This has been quite effective, however in the area of awareness, there remains some cross-over, with both including obligations to monitor compliance. We note that the TCF's compliance function has a very large scope, covering all aspects of a wide array of Codes and it would be unreasonable to rely too greatly on the TCF's ability to actively monitor those aspects of just one of those Codes that relate to TDR profile.
44. We acknowledge that TDRL has quite a lot on its plate and must prioritise the time of its only resource. That said, in our view and when possible, the TDR should give some greater emphasis to its own compliance monitoring program, something that is not really evident in the Business Plans for last year and the draft for this year. Of course, there would need to be a coordination conversation between TDR and TCF to avoid any duplication or waste.

Finding 4.

When resources permit, TDR should strengthen its own ways of periodically monitoring and reporting on scheme members' TDR awareness efforts, including consumers' reporting of the way they found the TDR.

45. The Commission's 2021 recommendation R7. went to ongoing resourcing of awareness activity and, amongst other things, continued reaching out to groups within the community who do not use the TDR. We were concerned that this was an area where TDR effort was not meeting community expectation for better data collection, insight and systemic issue reporting.
46. For example, in the current TDR information capture process, address information, including postcode is not compulsory, with around one third of consumers not providing this information. We understand that the scheme must strike a balance between learning what it practically can about its customers – and not putting up barriers to customers using the scheme. That said, we think both industry and consumer stakeholders see the TDR as important to systemic improvement in the sector and would prefer to see effort go into improving the contribution of this information.

Finding 5.

The TDR should be working with Fairway to develop and refine data capture of socio-economic and demographic information – to support analysis and reporting insights as to accessibility to the scheme.

5. Practice management

47. The Commission's 2021 Report also addressed the question of the guidance provided by the then TDRS to both industry and consumer stakeholders. Our Report had identified that at the time, there had been a drop-off in the currency of the different forms of guidance.

48. The Commission made three recommendations.

R8. Undertake a review of its topic-specific guidance to update current position statements to ensure they are fit for purpose;

- identify and fill coverage gaps in guidance; and*
- develop topic-specific guidance in the form of recurring issues articles and news articles into position statements.*

The review and (re)publication of position statements should occur by 24 December 2021.

R9. Ensure that all current and new topic-specific guidance set clear standards for Scheme Members and include how the TDRS will handle complaints where those standards are not met.

R10. Publish anonymised determinations (including those regarding assessment of jurisdiction) on the TDRS website to allow consumers, consumer groups and industry parties to understand how the TDRS has considered a matter in more detail.

49. Recommendations R8 and R9 have been implemented. A significant refresh of the practice Guides (formerly Position Statements) commenced in January 2022, with 18 Guides⁸ posted on the TDR website during 2022, one in 2023⁹ and one thus far in 2024¹⁰. The guides are generally quite clear and practical and good practice in our view.

50. We would fully expect that the rate of production of new Guides will slow over time – as the most common issues will have been covered, however reviewing and updating guides is an ongoing essential task and we would expect to see this continuing to occur regularly. Some of the guides are quite high level and these can be helpfully updated with examples of current common issues and/or with more details as to how the TDR expects to deal with a matter.

51. Recommendation R10 was for publishing anonymised determinations in full (previously only highly abbreviated case studies were published). This has been implemented, with 20 determinations published since Dec 2021, three of which have been published in 2024. TDR explains that they have an internal objective to publish every couple of months.

⁸ Covering: Services to minors; Customer Service Contracts and Terms and Conditions; Charges; Billing; Optical Network Terminal (ONT) placement; Disconnection or suspension of services; Locked Handsets; Lost or misplaced devices; Faulty mobile phones; Mobile phone drop-outs; Malicious interference; Broadband internet speed; Credit recovery; Transfers and porting; Installations, disconnections and restriction of services; Faulty equipment and services; and Common Issues.

⁹ Phone scams.

¹⁰ Terms and Conditions

52. TDR continue to publish abbreviated case studies, another useful method of providing information about its approach.
53. The combination of Guides, Determinations and Case studies, along with information about TDR's approach to complaints in Annual and Half-Year Reports is of a good practice standard. That said, the TDR will need to satisfy itself from time to time (perhaps with a roundtable or a telephone survey) that both industry and consumers and their advocates are not only finding them, they are also finding them useful and that they are up-to-date.

Finding 6.

The TDR should periodically check in with stakeholders and, importantly, a sampling of complainants about the value and utility of the various forms of TDR public guidance, checking that they are being found, that they are useful and up-to-date.

6. Systemic issues

54. The Commission made two recommendations regarding systemic issues.

R11. Amend the Customer Complaints Code to give express authority to, and place an obligation on, the Scheme Agent to analyse all complaints and enquiries it receives to identify systemic issues (see R1).

R12 Continue the work to improve the categorisation and reporting of complaints and enquiries to allow better identification of systemic issues. Within 18 months of the publication of this report, public reporting should include data on systemic issues and root causes.

55. Recommendation R11. was ultimately given effect by amendments to both the Customer Care Code (Clause 14.2 and 14.3 - an obligation on the service provider to analyse and improve processes where systemic issues are identified) and in the revised TDR Terms of Reference (Clause 9.1 (c) – an obligation on the scheme agent to advise Scheme Members and the Board about systemic issues and lessons arising from disputes).

56. With respect to Recommendation R12., we were told that the Scheme Agent Fairway and Scheme Members have been continuing to work on aligning categorisations of complaints and worthwhile progress has been made. We understand that this is a process that will take time to have an impact and would describe this as in progress.

57. We were disappointed to find that stakeholders were not generally conscious of any greater focus on systemic issues by either the TDR or Scheme Members, nor did the 2022-23 Annual Report give any weight to the systemic value of individual complaints. We have also seen the first draft iterations of reporting information on Root Causes – intended for the 2023-24 Annual Report and again, thought that they were well short of useful.

58. To illustrate, the Category reported is Billing and the top two root causes are listed as Disputed Charges and Account Errors. These are sub-categories, not root causes. Root causes might be “complex charging under certain plans” or “inadequate training in data input by sales staff” or “customers not reading paper bills”.

59. An apparent reluctance to tackle systemic issues has marked the early years of every EDR scheme that we have reviewed. Industry participants are typically reluctant to paint their industry as ‘systemically unfair’ or actively search for other customers that may have been affected by an issue. EDR schemes often don't have the analysis or investigatory skills in-house or prefer to focus on what they see as their ‘core business’, which is dealing with complaints at an individual level.

60. Often EDR scheme funding has a very small fee attached to individual matters (as is the case for TDR), leaving them the challenge of finding the resources to take on a much larger scale effort to tackle broader impact matters. And yet, in our experience, a significant proportion of telecommunication complaints we have seen in New Zealand, Australia, Canada, and we understand from their reports, the UK, include potential systemic issues.

61. The 2022-23 Annual Report provides an example. Under the heading “Phone came with surprise plan”, a case study outlines the experience of a consumer who incurred several months

of unexpected billing after purchasing a basic mobile phone. Ultimately the TDR decided that the provider had not provided sufficiently clear and explicit terms and conditions and ordered a full refund of the monthly charges. There was no mention of the almost certain systemic problem for other customers of the same product, nor of the possibility of other scheme members using similar marketing and sales approaches.

62. In our 2021 report, we pointed out that the past three annual reports had not mentioned systemic issues, despite the then Customer Complaints Code making it clear that it was a responsibility of the Scheme Agent. A search of this most recent Report also finds zero instances of the word “systemic”. We understand that the 2023-24 Report will reference plans to improve analysis around systemic issues in the coming year – ie. 2024-25.
63. We do understand that the TDR resources are limited. We understand that a systemic investigation of problems across a product range, across many customers (potentially thousands) and possibly across many scheme members is not easy to demand of an SM and even if the SM is expected to do most of the work, the TDR CEO would need to satisfy themselves that the matter had been dealt with adequately.
64. A proper investigation of a potential systemic issue will usually require a framework of obligation, cooperation, resourcing and assistance from members, the TCF and/or the Commission. There will typically be a range of responses open to the EDR scheme – from simply alerting the SM, requiring the SM to provide systemic information, opening an inquiry or investigation into one SM or to other providers in the sector, or to report the issue to the relevant regulator. The appropriate framework takes time to establish. However, in our view, reporting and publicising the systemic nature of individual matters is entirely within the TDR’s current capacity.

Finding 7.

The Commission’s recommendations regarding systemic issues arising from telecommunications complaints have, at best, only partly been implemented. In this year’s review, the Commission may wish to consider requiring a more determined implementation including some regular reporting to the Commission, Scheme Members and other stakeholders on progress (perhaps in the TDR half yearly reports).

7. Complaints handling process

65. The Commission's recommendations R1 – R3b regarding amendments to the CC Code, the TDR Terms of Reference and the Scheme Agreement were aimed at strengthening the complaints-handling process at TDR and supporting other related recommendations.

- R1. Conduct a full review of the Customer Complaints Code and publish the revised Code by 1 August 2022. At a minimum, the review must cover the matters identified in recommendations [3b, 5, 11, 13, 15, 18b, 24] of this report. Proposed changes should be developed with the TDRS Council and tested via a full public consultation process with the Scheme Agent and other interested parties (including consumers and consumer groups).*
- R2. Conduct a full review of the Scheme Terms of Reference and "Agreement with the Scheme Agent for Provision of Services in respect of the Telecommunications Dispute Resolution Service" and publish the revised Terms of Reference by 1 August 2022. At a minimum, the review must cover the matters identified in recommendations [20, 21, 22].*
- R3a. Complete an interim amendment to the Customer Complaints Code to ensure the TDRS' jurisdiction covers disputes under a Commission Code (meaning the 111 Contact Code and a Commission RSQ code), any industry RSQ code as required by s 24 7 of the Telecommunications Act 2001, and the Copper Withdrawal Code.*
- R3b. The review of the Customer Complaints Code under R1 should minimise the number of exclusions that prevent consumers from utilising the scheme. At a minimum, the review should include reviewing and either amending or removing the following exclusions from clause 18:*
- Clause 18.1.4*
 - Clause 18.1.6*
 - Clause 18.1.21*

66. These four recommendations were carried out in a participative way and are in effect today. By all stakeholder accounts, the changes have had a positive impact, most noticeably by reducing the number of complaints that are excluded from TDR consideration. This is widely viewed as a significant improvement to the TDR operation, including by Scheme Members.
67. Because of the full redrafting of the Customer Complaints Code (now the Customer Care Code) and the TDR Terms of Reference and the wholesale shift of TDR-related obligations from the Code to the ToR, an easy like for like comparison between the old and the new is not straightforward.
68. Under the old Customer Complaints Code there were 24 specific exclusions set out in Section 18. Under the current TDR ToR, there are 12. The table below attempts to show what has happened to the old exclusions under the current regime. Note that although a specific exclusion may have been removed, it does not follow that such a matter would now be included. Often such a complaint would be excluded by some other means (eg. a new definition as to eligibility) or excluded or not upheld on merit.

Previous CC Code	New ToR
18.1.1 – entity was not a Scheme Member at time of event	No longer a listed exclusion but in practice, remains in effect
18.1.2 – frivolous or vexatious or trivial	Now Sched. 4 Para 11 – expanded to include refusal to engage or bad faith by consumer
18.1.3 request for information	No longer a listed exclusion
18.1.4 equipment or apps that SM does not support	Now Sched 4, Para 1 – reworded to “not purchased from or been supplied” by SM
18.1.5 Level of charges	Now Sched 4, para 2 – now permits complaint about misleading conduct
18.1.6 Network coverage	Now Sched 4, para 3 – now permits complaint about misleading conduct
18.1.7 111 emergency calls	No longer listed
18.1.8 by an SM about another SM	No longer listed but in practice excluded by wording of “customer”
18.1.9 relates to Yellow pages advertising	No longer listed
18.1.10 Privacy issue	Included in Sched 4, Para 4 “under jurisdiction of another . . .”
18.1.11 subject to legal other action elsewhere	Included in Sched 4, Para 5
18.1.12 customer does not have sufficient interest in matters	No longer listed, however in practice this remains a reason for exclusion
18.1.13 TDR not legally permitted to resolve	No longer listed
18.1.14 relates to domain names	No longer listed – but covered under Sched 4, para 4
18.1.15 claiming more than \$15,000	Now covered by Sched 4, Para – same limit as Disputes Tribunal
18.1.16 previous complaint unless new information	Now covered by Sched 4, para 7
18.1.17 corporate or government customer	No longer listed but in practice excluded by definition of “customer”
18.1.18 previously accepted resolution	Now covered by Sched 4, Para 9 (a)
18.1.19 customer cannot identify event	No longer listed
18.1.20 general non-specific dissatisfaction	No longer listed
18.1.21 Broadband congestion or speed unless Committed Rate	Now covered by Sched 4, Para 8 unless specified standards not met – also TCF Broadband Marketing Code applies
18.1.22 if related to authorised debt collection	No longer listed
18.1.23 has not responded to offer within 6 weeks	Now covered by Sched 4, para 9 (b) – no response to offer within 30 days
18.1.24 refused to engage or acted in bad faith	Now covered by Sched 4, Para 11

69. TDR report that there has been a 46% reduction in ‘outside jurisdiction’ matters, which is correct. The percentage figure of No Jurisdiction of the total of complaints handled (not simply referred) was remarkably consistent at around 34% for the three years between 2020 and 2023 and has dropped to around 19% for 2023/24.

Figure 5: TDR Dispute Summary August 2024

2020-2021		2021-2022		2022-2023		2023-2024	
Outcome	Count	Outcome	Count	Outcome	Count	Outcome	Count
Abandoned	30	Abandoned	43	Abandoned	51	Abandoned	84
Adjudication	21	Adjudication	29	Adjudication	58	Adjudication	50
Early Settled	3	Early Settled	4	Early Settled	8	Early Settled	26
No Jurisdiction	46	No Jurisdiction	55	No Jurisdiction	95	No Jurisdiction	51
Settled	12	Settled	25	Settled	23	Settled	39
Withdrawn	13	Withdrawn	9	Withdrawn	29	Withdrawn	19
(blank)	1						
Grand Total	126	Grand Total	165	Grand Total	264	Grand Total	269

70. We think a little caution should be applied in interpreting these numbers. First, as mentioned, the numbers are very small and may be subject to some volatility (eg. if just a couple of dozen extra consumers lodged complaints – it could have an outsize impact on the percentages).
71. Second, the question of jurisdiction is not black and white. The number of out of jurisdiction matters depends to some extent on the attitude of SMs (their flexibility in having a matter considered by TDR) and the stance taken by the TDR decision-maker (their application of ‘fair and reasonable’ compared with a ‘black-letter’ view of the rules). We also discuss jurisdiction decisions later in the report.
72. We conducted a limited review of the complaints procedures and a walkthrough of a dozen case files to confirm the changes applied since 2021. We noted a number of points at which the procedures have been adapted to the Commission’s requirements.
73. We would regard these recommendations as implemented.
74. The Commission went on to make eight recommendations regarding the complaint-handling process.

R13. Amend the Customer Complaints Code to reset the deadlock period for the TDRS from six weeks to 15 working days (see R1).

R14. To ensure consumers have confidence that their dispute will be dealt with quickly and efficiently and without undue delay:

- *the TDRS should display sufficient independence from Scheme Members by proactively deadlocking complaints where the complaint has not been resolved within the deadlock period;*
- *the TDRS quality assurance framework should be amended by 24 December 2021 to require assurance reviewers to check whether Resolution Coordinators are deadlocking complaints promptly in line with the Customer Complaints Code; and*
- *the Scheme Agent should put processes in place to ensure that the deadlock period is tracked and reported upon.*

R15. Improve the complaints handling process to ensure that consumers’

complaints that involve Wholesale Scheme Members are resolved quickly and efficiently (see R1).

- R16. *Revise the TDRS' internal complaints handling processes to ensure that information consumers provide regarding their complaint is referred back to and utilised. Ensure there is clear communication with consumers to inform them when additional information is required in order to progress their complaint.*
- *The TDRS should ensure that it offers and supports various means of submitting complaints (such as over the phone or referrals from consumer agencies), to ensure all consumers are able to make a complaint.*
- R17. *When deadlock has been reached, the TDRS should immediately remind the relevant Scheme Member(s) of its/their Customer Complaints Code obligations to cease debt recovery action and to desist from disconnecting consumers for services under dispute.*
- R18. *All parties should have equal opportunity to provide views and respond to others' submissions during the Complaint Summary process. Adjustments should include, but are not limited to:*
- *(R18a.) revising the TDRS' internal processes to provide consumers with an opportunity to respond to the Complaint Summary; and*
 - *(R18b.) revising the Customer Complaints Code to explicitly permit consumers to respond to the Complaint Summary including to respond to Scheme Member submissions that the complaint should be ruled outside jurisdiction (see R1).*
- R19. *The complaints handling process should be amended to allow parties the opportunity to review the determination to ensure that key facts are accurate before it is finalised. This will improve the quality of determinations.*

75. We were able to confirm the implementation of these eight recommendations and were able to see impacts in the complaint-handling process.
76. R13. and R14. From our interviews and review of case files it seems that the reduced timeframes specified in the Customer Care Code and a more flexible approach to deadlock and timeframes generally from scheme members means that early part of dispute handling progresses more quickly through TDR. Both interview accounts and a review of the case file records showed matters moving through these early steps ahead of the deadlines.
77. The Scheme Agent case management system records deadlock timings as recommended and a report is provided to the TDR Board each month.
78. That said, these timeliness improvements at the front end of the complaints process did not show up in the overall timeliness of matters. The data we reviewed showed nearly identical average overall completion times from 2021/22 through 2023/24 – of around 96% of total matters resolved or closed within 60 days. We think that this might be explained in part by a more thorough (resource and time-intensive) later stage complaint-handling process. The customer satisfaction survey results as to efficiency were also entirely consistent over the three year period with 89%, 88% and 88% (respectively) of respondents agreeing or strongly agreeing that the time taken for the TDR process was reasonable.

79. Without a detailed analysis of the full-time staff applied to the TDR disputes at each point in these three years, along with a more thoroughgoing analysis of all the other factors that may have impacted on timeliness, we can't be definitive about the net impact of the recommended changes on timelines. Given the significant step up in numbers of complaints, it may well be that keeping the timeliness metrics steady over that time should be celebrated as a significant achievement.
80. R15. The changes specified by the Commission have been implemented and from our discussions with stakeholders (in particular Fairway staff, RSM and WSM Scheme Members), a substantive improvement in coordination and response to complaints involving WSMs has been experienced, in particular the ability for TDR and WSMs to directly interact without going through an RSM. Our limited review of case files did not extend to matters involving both an RSM and a WSM.
81. R16 (1st para). R18a & b. The Fairway TDR process has an elegant way of ensuring procedural fairness – by progressively building the Complaint Summary as a single document. This begins with the registration of the complaint, to which is added key information such as the facts of the complaint, the desired resolution, the SM response, additional information, any analysis, links to source and eventually the outcome (including a determination if made). This makes it the authoritative version of the matter, for the SM, the complainant and the TDR. (Many other EDR schemes have more fragmented and less transparent record-keeping, which can lead to repetition of work, miscommunication, complainant confusion, unfairness and error.)
82. The Fairway TDR process includes the specific steps required by the Commission – re: giving the consumer opportunity to respond to the complaint summary and the SM input. We consider the revised process to be good practice and achieves the intent of the Commission recommendations.
83. R17. We saw standard letters on case files warning Scheme Members about the need to halt debt recovery and any disconnection action.
84. R19. The Fairway TDR process now includes the circulation of a draft or proposed determination to both parties for comment, which we again thought was well-implemented and good practice.
85. The TDRS's complaints handling process is expected to meet the principles of accessibility, fairness, efficiency and effectiveness. We think that the 2021 changes have clearly improved accessibility, time efficiency is better in the early stages and has been maintained despite a more robust process and it follows (we think) that overall effectiveness has improved. As detailed above, although substantive steps forward have been made, we remain a little concerned about fairness.

Fairness settings

86. Scheme Members told us that since the reforms, they experienced TDR as being a bit more willing to put pressure on them or push back – albeit (in their words) in a reasonable way. This is a good sign. Fairness in an EDR setting is not simply a matter of strict neutrality. To some extent, all schemes must take into account the asymmetry of knowledge, power and resources that exists between service provider and consumer. To obtain a genuine fairness between the parties, schemes will implement a range of (often small) measures to 'level the playing field' – at least to some degree.

87. These will include information resources for the consumer, assistance with framing a complaint including assisting the consumer to correctly describe the details of their complaint, provide the right, complete supporting evidence, describe the solution they are seeking, advise them where they are seeking something that is either out of scope or unreasonable. In some cases, for example where a complainant is not fluent in a jurisdiction's language, has a disability or otherwise lacks literacy skills, translation services may be provided, details of a complaint are taken down over the phone or the case officer helps to draft a summary or correct the written complaint where the consumer has made an error.
88. Once a complaint is put into writing, a case officer may have a detailed conversation with the service provider to explain the situation, might check with the provider as to the background of the matter or agree a variation to the process that takes into account the consumer's circumstances. The scheme may, to more or less degree, challenge the service provider on their responses if they are, for example not seen as addressing all the issues raised or not being in good faith.
89. In the course of the normal back and forth that occurs in any accepted dispute, the typical case officer may be more proactive in assisting the consumer to understand the communications from the service provider, to understand an offer from the provider or a decision from an independent decisionmaker. Equally, the case officer may push back on inputs from the consumer if, for example, they are being unrealistic or changing their story as the matter progresses.
90. Getting this fairness balance right involves dozens of small settings or adjustments made over a number of disputes and over some period of time. Many of these will not be codified or documented, rather they will be in the 'culture of how things are done around here'. Interpretations of procedures will happen in conversation with a supervisor, tone of expression during training will set an informal expectation, shared examples will colour how a complaint is dealt with, office behaviours have an impact and so forth. It takes some skill and judgement to be able to appropriately assist a consumer through their complaint, without becoming an advocate for them – or for the member.
91. While we understand that Fairway spends some effort to work with external practitioners to maintain good practice and consistency, in our experience, the combination of an outsourced operating model (TDR to Fairway) and a further outsourced decision-making model (Fairway to external practitioners) does make it a little more complex to adjust and adapt the fairness settings in an EDR scheme. Like all structures, there are inherent strengths and weaknesses.
92. From our limited review of case files and the explanation of Fairway's TDR procedures, we think that some of the settings may be set somewhat closer to neutrality and protecting the TDR than to fairness (ie. a level playing field). We also note that one of the submissions to the Commission's invitation also made mention of a tendency to more legal formality than is common in other schemes.
93. For example, although contacts can be made by telephone as well as in writing, the vast majority of those who call are told to provide their complaint in writing (by email or on the webform) - see R16 (para 2). We also understand that only in very rare cases would a case officer assist a consumer to frame their complaint. As is common in EDR, we saw consumer complaints that were quite poorly expressed and unclear and as a matter of Fairway policy, they were left in that verbatim state throughout the dispute.

94. We also saw a number of out of jurisdiction decisions that we thought fell onto the side of black-letter interpretation rather than fair and reasonable. This was not because the decision-maker was wrong at law or misinterpreting the rules – but because most EDR schemes would, we think, have accepted the matters or have at least asked the SM to accept that TDR would deal with them.
95. We make these points not as obvious failings – but to underscore that to achieve a shared understanding of the appropriate fairness settings, much will depend on the effectiveness and flexibility of the working relationship between TDR and Fairway. These are not settings which can be adjusted by means of one or two recommendations from us as to procedure or process. Over time, the TDR CEO will need to progressively become familiar with these informal and sometimes quite subtle settings and ensure that TDR, as accountable owner, is comfortable with them. All the early signs we observed of this working relationship were highly positive but we recognise that this is not just a matter of the TDRL “instructing” the Scheme Agent. This is a contractual relationship, with mutual obligations and it requires both trust and recognition of where the boundaries are.

Finding 8.

In this initial period of getting to know each other and working out the relationship and protocols, the TDR CEO could usefully spend some time getting a bit closer to how the Scheme Agent operates than would be considered ‘normal’. Once that confidence in each other is established, we would expect the TDR CEO to step back to a more ‘normal’ relationship.

96. A very useful process put in place by many EDR schemes which can help avoid too much wrestling over these settings, is for a periodic (typically once a year) independent review of a representative sampling of closed case files – a type of independent peer review. We recommend that this is done by an external, independent legally qualified but EDR – experienced expert. This latter qualification is critical in our view to bring the essential element of “fair and reasonable in all the circumstances” to the review. Although it must take the law into account, EDR is by design, not intended to act in the same way as the legal system.
97. The independent peer assessment should, of course, be shared and discussed with the Scheme Agent but the ultimate client should be the TDR Board. We have also suggested to the Board that while, of course, they must not meddle in complaint-handling directly, they should feel free to read through a few closed case files for their own understanding of how the scheme is working in action. (And then resist any temptation to “get into the kitchen”!)

Finding 9.

The Commission should consider a recommendation that the TDR initiate periodic (at least yearly) independent reviews of a representative sampling of closed case files and jurisdiction decisions – to enable the TDR to understand the approach being taken by the scheme agent.

8. Governance

98. A key area of the Commission's review in 2021 was to address the structure and governance of the TDRS. They made the following recommendations.

R20. Ensure that governance responsibility for the TDRS sits with the TDRS Council, to ensure:

- *The TDRS Council has the powers to set and amend the rules for the TDRS including, but not limited to, jurisdiction, monetary compensation, process quality, and Scheme Members' roles and responsibilities.*
- *The Scheme Agent is accountable to the TDRS Council, enabling the TDRS Council to:*
 - *to set and manage the terms of the Scheme Agent's contract;*
 - *set KPIs and assess the Scheme Agent's performance; and*
 - *either (a) set the budget for the scheme; or (b) make recommendations to the TCF for the scheme budget.*

R21. The TDRS Council's composition should be rebalanced to ensure that resolutions can be passed using a combination of independent council members and either consumer group or industry group representatives, ensuring that no one group has the effective or explicit right of veto.

This could be accomplished by:

- *having an independent chairperson, with equal numbers of consumer and industry representatives, and a simple majority required to pass a resolution; or*
- *the TDRS Council could be comprised of equal numbers of independent, consumer and industry representatives, with a two thirds majority required to pass a resolution.*

R22. Adjust the terms for which the TDRS Council members can serve, to ensure continuity through longer tenures. This should be coupled with regular, staggered refreshes of the council members.

- *There should be a limit placed on the number of consecutive terms for which members can serve. This will ensure the TDRS Council members and Chair are refreshed on a regular basis.*

99. Our terms of reference for this Expert Review accepted that Governance was an area that had taken some time to implement and that it was too early to assess properly for effectiveness. Therefore, governance has been treated as out of scope for this review period. Entirely sensible in our view. That said, we did gather feedback from stakeholders as to the early signs of the impact of the structural and governance reforms – and we think it is worth relaying these thoughts briefly here.

100. Feedback was generally very positive. The TCF and Scheme Members offered the view that the revised model was a better mix of roles and responsibilities and that although early in implementation, the new relationships were working well and there was a sense of everyone “staying in their own lane”. Both RSMs and WSMs were highly positive about the professionalism, approachability and responsiveness of the Scheme Agent under the new regime.
101. The only issue raised with us from the industry side was the continuing role of the TCF CEO as a minority shareholder of TDRL. This was not reported as causing any problems, but was seen as a bit of an odd fit.
102. From the consumer side, there remains some concern that the TDRL Constitution requires that the TDR budget must be approved by the TCF and that any fee structure must meet unanimous shareholder approval. The TCF also controls the nomination of industry Directors.

Finding 10.

The controls that remain with industry over the TDR budget are inconsistent with the spirit of a desire for independence that drove the governance reforms arising from 2021. These controls are expressed in an absolute way and would not be seen as truly ‘independent’ by non-industry stakeholders. We think the arrangements are not good practice and are frankly unnecessary. In our experience, industry EDR schemes are invariably very sensitive to the cost of the scheme to its members and go to great lengths to consult on any change.

103. The Scheme Agent was similarly relieved to be in what it considers to be its proper role and to have an independent body (TDRL) being accountable for the bigger picture issues and for the relationship with stakeholders. They were strongly positive about the early stages of working with the TDRL Board and pleased to now have a TDRL CEO to work with.
104. While to some extent waiting to see how the new arrangements will work when fully in place, consumer advocate stakeholders similarly expressed highly positive views about the new structural and governance arrangements.
105. It should be noted that a few industry stakeholders raised varied issues through their submissions and at interview about the future structure and governance of EDR in telecommunications. We have not tried to address these, given our scope, however we note that we heard ideas for:
 - (1) Mandatory membership of TDR for all in the sector
 - (2) Consolidation of several small EDR schemes into a larger, more cost-effective multi-sector scheme
 - (3) Fairer apportionment of the costs of running TDR, more user-pays and a fairer contribution from WSMs
 - (4) A less legalistic approach to the complaint-handling process (from another EDR scheme)
106. A couple of questions were raised with us about the size of the TDRL Board (7 members made up of an independent Chair and three each of industry and consumer representatives). While

we are aware of smaller Boards for small scale EDR schemes, we do not think the TDR size is excessive.

107. No doubt a group of five skilled Directors would be capable of governing the TDR in comfort. However, a Board of a public purpose organisation such as TDR, not only has to be effective and knowledgeable, but it has to give its stakeholders confidence that it is effective and knowledgeable. We have seen other small EDR schemes look at reducing their Board size and then have to create additional formal consultative structures in order to retain that stakeholder confidence (particularly on the member side).
108. In addition, given the likely need to bring wholesale and smaller service providers into the TDR membership, we would suggest retaining the current size as a seat at the Board table for one or other of the new categories of SMs would be more manageable.
109. No doubt a more searching review of governance will be a feature of the Commission's next review in 2027 and will include, amongst other things, gathering some intelligence about stakeholder confidence in the Board's effectiveness and knowledge.
110. As mentioned, we did not hear strong complaints about the adequacy funding during our consultations, nor did we see evidence that it was not currently sufficient. That said, we are conscious that our report suggests strengthening TDR activity in awareness and engagement, shifting the balance of fairness, improving reporting and analysis and taking on systemic issues.
111. These will inevitably lead to some cost increase and in areas that are not related to a simple calculus of complaints numbers that current SM fees are based on. We think that the Board of TDRL will need to re-examine the way fees are applied and the way they are structured. Good practice in fees models for EDR schemes has several elements:
 - A fixed element that corresponds to the schemes' fixed administrative costs
 - An element that is related to previous year's complaint volumes (steady user-pays)
 - An element that relates to current complaint volumes (responsive to volatility)
 - An element that provides some incentives for behaviour by SMs
 - An element that relates to the 'value-add' effort needed for awareness, engagement, systemic issues, analysis and reporting

Finding 11.

The TDRL will need to manage its medium to long term funding risk by developing a funding model that is responsive to all the services and outputs expected of it.

9. Jurisdiction

112. The final set of recommendations made by the Commission in 2021 covered aspects of Jurisdiction, set out below.

R23. The TCF should actively encourage a broader membership of the TDRS. This should, at a minimum, include regularly engaging with smaller service providers to encourage them to join, and to understand and address the potential barriers to them becoming Scheme Members.

R24. The Customer Complaints Code should be amended (R1) to ensure that:

- *Consumers are able to appoint a lawyer to advise them in relation to a complaint without causing their complaint to be deemed outside of the TORS' jurisdiction.*
- *Consumers have longer periods to access the scheme (ie, longer than the existing 12-month limit) and to respond to offers of resolution from their provider before a complaint can be closed (ie, longer than the six-week limit).*
- *The compensation limits keep pace with those of the Disputes Tribunal, and the remedies available are consistent with those available at the Disputes Tribunal.*

113. R23. Under the new structure, this recommendation for broader membership has been taken on by TDRL, albeit concrete steps to implement have had to wait until the key TDRL resource, its CEO, was appointed, a few weeks before the writing of this report. It is too early to make an assessment, other than to observe that this challenge is strongly supported by the Board and squarely in the CEO's early planning.
114. A minor caution is to suggest that rather than counting scheme members as a measure of coverage, the TDR should adopt a measure for numbers of telecommunications consumers that are not covered by the scheme. The aim being to reduce that number over time. (These figures, we understand are periodically assessed by the Commerce Commission and could be made available.)
115. R24. The recommended amendments to the CC Code have been made and are embedded in Scheme Agent Terms of Reference and procedures. However, the Scheme Agent advises that to their knowledge, as yet:
- (1) there have been no instances of a consumer using a lawyer during their complaint
 - (2) no consumer has used the additional time allowed (albeit, the date of issue is not a mandatory field in the Fairway database, so automated reporting is not available)
 - (3) no awards of compensation to a consumer have exceeded the pre-existing TDR dollar limits

10. Additional observations

116. While our Report was to focus on implementation progress from the 2021 Review, we were also asked to make any observations regarding good practice that emerged from the review activity. Apart from observations embedded in the sections above, we observed two additional areas that would benefit from some attention:
- (1) Performance measures
 - (2) Positioning of the jurisdiction checks in the Scheme agent workflow
117. We are acutely conscious that TDR and the Scheme Agent have considerable workload and many issues to deal with in the coming couple of years. Neither of these matters are critical or urgent, rather we raise them now because opportunities to address them may well arise amongst other project and implementation work.

Performance measures

118. EDR schemes in general, do not have especially comprehensive Key Performance Indicators (KPIs). While they will generally provide a range of information about their work, many only report against efficiency targets – eg. how many matters are completed within their target dates. Typically, customer satisfaction is the next thing to be measured, and some will set targets for these. It is generally only the more mature or larger schemes that spend the time trying to work out measures that go significantly beyond this.
119. TDR is doing better than many schemes with published consumer satisfaction measures (but not KPIs), consumer awareness targets and complaint volume targets to add to its timeliness targets – and should be commended for this.
120. Our first observation is that for 2023-24, TDR is meeting two of its three new efficiency targets by a large and what looks like a comfortable margin. As a general rule, comfortably exceeded targets are not tough enough to perform any real accountability function and run the risk of being perceived as a bit weak by stakeholders.
121. Second, in principle, timeliness measures should always be from the consumer or the scheme member’s perspective – eg. from when the consumer lodges a complaint, not from when (say) registered or when the written complaint is received or from the scheme members’ receipt. There is an understandable temptation to configure measures from and to some point in the process that the EDR scheme (or any organisation) can control – in order for the measure to be ‘fair’. However, if these do not match the external parties experience they lose credibility. The point is for the organisation to be accountable to external stakeholders for its service standards, not for internal fairness. While these broader measures are harder to manage, they also encourage organisations to think outside their own boundaries – for example, how to enable consumers or members to respond quicker.
122. Third, we were not persuaded that the three measures chosen really represent the key aspects of timeliness that matter to the consumer or the member. For example, the third measure, “Time between issuing final determination to closing the dispute within the 30 business days” affects only the handful of consumers (50 in 2023-24) who actually receive a final

determination. For the most part it is a measure of the timeliness of the consumer's response to the final determination – ie. not really a measure of the Scheme Agent's performance. And, other than possibly a housekeeping achievement for Scheme Members, no one outside of the TDR cares about when the matter is 'closed'.

123. Fourth, a useful additional dimension of reporting, albeit difficult to set targets for, is to report on outcomes and more often naming scheme members. Some EDR schemes report on total compensation awarded, on penalties revoked, on unfair contracts set aside and so forth. Some also publish regular tables of rates of complaints for providers per service or per customer. Also useful is to report on systemic matters that have resulted in changed processes for consumers.
124. TDR would have to progress slowly and bring scheme members along with them, but these measures do a great deal to boost the credibility of an EDR scheme as frank and fearless.
125. We think development of a more comprehensive basket of KPIs is important and should be pursued, at least in the short-to-medium term. Not only is it generally good practice, but our observations under Fairness earlier in this report, which go to a period of close oversight by TDRL, need to be addressed sooner rather than later. In our experience, the way these 'fair and reasonable' judgements are made cannot be left to 'solidify'. It will only make change all the more difficult.

Finding 12.

TDRL and the Scheme Agent should develop a more comprehensive basket of Key Performance Indicators, covering matters beyond efficiency, such as accessibility, awareness, member and consumer satisfaction.

Jurisdiction checks

126. Although we suspect it is an artefact of an older way of thinking about complaint-handling in EDR, the TDR retains some unusual ways of dealing with jurisdiction which we think could be improved.
127. Good EDR practice with regard to jurisdiction considerations, in our experience, is for the question of jurisdiction to apply to admitting a matter for the scheme's consideration. We understand that this is not necessarily how the law sees the term, but we think that it is important for an organisation primarily there to serve consumers should, as much as possible, keep its processes and terminology aligned with consumer expectations and common understanding.
128. Second, from hundreds of EDR consumer interviews, consumers assume that once a scheme has accepted a complaint, the matter is in jurisdiction – ie. within the powers of the scheme to deal with the matter.
129. Third, from hundreds of interviews with scheme members in many sectors, scheme members do not want to do a great deal of work to engage with the EDR scheme, if the matter is out of jurisdiction. They will frequently argue strongly that if the matter is out of jurisdiction, it should be closed down as soon as practicable.

130. While TDR, like all schemes, has an initial simple jurisdiction check for obvious eligibility on first contact (is it telecommunications? is it about a scheme member? etc). It then has a formal, legal check for jurisdiction by an external practitioner much later in the process, just before the matter is sent to mediation or determination – and after the parties have provided a considerable amount of information and reviewed each other’s submitted materials.
131. We think that this is unnecessarily formal, adds two days to the process, and is an unnecessary step in most cases. More importantly, it risks aggravating the parties who by this stage have been involved for a couple of months, have done quite a lot of work, only to be told that the matter is out of jurisdiction. This is particularly true for the complainant.
132. We understand why for the sake of certainty, external legal practitioners would want all the facts in front of them before determining jurisdiction, but we think that should not be the primary consideration. We also understand that it is only a small fraction of total matters that reach deadlock.
133. Consistent with the principles discussed in the paragraphs above, most EDR schemes rely on their case officer staff (in Fairway’s case, it would be resolution coordinators or facilitators) to determine jurisdiction before accepting the matter as a complaint – a five or ten minute process, with the support of a case management system checklist and some training. They would only escalate this decision to a lawyer or senior ombudsman where there is some genuine doubt about a disputes’ eligibility.
134. Of course, if new information comes to light that rules that the complaint cannot be dealt with, that could trigger closing the matter. However, in our experience, that is rare. A typical complaint in telecommunications with a question mark over eligibility would be one about an increase in fees. The SM says it’s about fees – therefore out of jurisdiction. The complainant says, no it is about misleading advertising, failure to disclose and customer service – all of which are in jurisdiction. So, the matter must be accepted and the evidence assessed, after all it is the consumer’s complaint.
135. In most schemes, information would then be gathered from both parties and if the matter went to a decision, the adjudicator would weigh up if any of the evidence supports the consumer’s allegations. If not, the complaint would be closed or not upheld or dismissed or some similar term. The question of technical jurisdiction is just dealt with as a small part of the adjudicator’s explanation of the decision. Typically, the reference to the inability of the scheme to consider fees and pricing could be dealt with in one or two sentences of a decision.
136. We think this is a better process and outcome than calling the matter out of jurisdiction nearing the end of the process – which implies it was all a wasted effort. In this example, the consumer has had their matter heard, the evidence they proffered was assessed, a decision was arrived at on the merits and in our example, the SM has their view upheld. Another benefit is that the TDR’s statistics will better reflect the effort gone to – more matters will be recorded as mediated or determined and fewer will be recorded as out of jurisdiction - a finding that we think suggests a lack of authority or scope.
137. Again, this is a suggestion for consideration. The current process is not resulting in poor decisions, but may not be optimum.

11. Summary of findings

Finding 1

In our view, it is too early to safely conclude that the measures undertaken after 2021 have been successful in actually lifting New Zealand consumer use of TDR above its long-term trend. A reliable analysis would have to also consider the growth of the telecommunications market, changes in products and services, pricing changes, billing arrangements, economic health of the community, demographics of usage and track awareness data, amongst other things. The next review, due in 2027 should revisit usage of the scheme discussed at some length in the 2021 Report.

Finding 2

The TDR should collect some granular categorisation data as to what happened to the consumer's complaint from the follow up contacts that TDR make to both the referred consumer and the Scheme Member. This could be initially done on a periodic sampling basis to keep costs down.

Finding 3

In addition to the obvious need to monitor awareness survey results, it would be useful for the Commission to receive updates from the TDRL on the future awareness program design, the adequacy of awareness resourcing and feedback from stakeholder organisations on the effectiveness of engagement with TDR.

Finding 4

When resources permit, TDR should strengthen its own ways of periodically monitoring and reporting on scheme members' TDR awareness efforts, including consumers' reporting of the way they found the TDR.

Finding 5

The TDR should be working with Fairway to develop and refine data capture of socio-economic and demographic information – to support analysis and reporting insights as to accessibility to the scheme.

Finding 6

The TDR should periodically check in with stakeholders and, importantly, a sampling of complainants about the value and utility of the various forms of TDR public guidance, checking that they are being found, that they are useful and up-to-date.

Finding 7

The Commission's recommendations regarding systemic issues arising from telecommunications complaints have, at best, only partly been implemented. In this year's review, the Commission may wish to consider requiring a more determined implementation including some regular reporting to the Commission, Scheme Members and other stakeholders on progress (perhaps in the TDR half yearly reports).

Finding 8

In this initial period of getting to know each other and working out the relationship and protocols, the TDR CEO could usefully spend some time getting a bit closer to how the Scheme Agent operates than would be considered 'normal'. Once that confidence in each other is established, we would expect the TDR CEO to step back to a more 'normal' relationship.

Finding 9

The Commission should consider a recommendation that the TDR initiate periodic (at least yearly) independent reviews of a representative sampling of closed case files and jurisdiction decisions – to enable the TDR to understand the approach being taken by the scheme agent.

Finding 10

The controls that remain with industry over the TDR budget are inconsistent with the spirit of a desire for independence that drove the governance reforms arising from 2021. These controls are expressed in an absolute way and would not be seen as truly 'independent' by non-industry stakeholders. We think the arrangements are not good practice and are frankly unnecessary. In our experience, industry EDR schemes are invariably very sensitive to the cost of the scheme to its members and go to great lengths to consult on any change.

Finding 11

The TDRL will need to manage its medium to long term funding risk by developing a funding model that is responsive to all the services and outputs expected of it.

Finding 12

TDRL and the Scheme Agent should develop a more comprehensive basket of Key Performance Indicators, covering matters beyond efficiency, such as accessibility, awareness, member and consumer satisfaction.